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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-sixth (extraordinary) session

SUMMARY RECORD OF THE 42nd MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 21 August 2001, at 10 a.m.

Chairperson: Ms. BONOAN-DANDAN

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Second periodic report of Japan (E/1990/6/Add.21 and Corr.1; E/C.12/CA/JAP/1; E/C.12/2001/NGO/2-4; HRI/CORE/1/Add.111; written replies to the list of issues prepared by the Government of Japan (document without a symbol))

1. At the invitation of the Chairperson, the members of the delegation of Japan took places at the Committee table.

2. The CHAIRPERSON welcomed, on behalf of the Committee, the members of the Japanese delegation and invited the Permanent Representative of Japan to take the floor.

3. Mr. HARAGUCHI (Japan) said that since the submission of his country's initial reports (E/1982/3/Add.7, E/1984/6/Add.6 and E/1986/3/Add.4) in the early 1980s, Japanese society had undergone profound change, characterized by a lower fertility rate, the rapid ageing of the population and economic stagnation. In response to the challenges represented by such developments, the Government had endeavoured, with some degree of success, to promote human rights in all spheres, including by ensuring equality between men and women and establishing a new appeals procedure in case of human rights violations. With regard to the claim for compensation brought by sufferers from Hansen's disease, the Prime Minister had delivered an apology on behalf of the Government and expressed its sincere regret, and had acknowledged that the isolation policy followed thus far had caused those affected serious harm. That unhappy affair showed how, in seeking to promote social security, it was possible to commit an inadvertent human rights violation. In any event, his Government spared no effort to promote implementation of the rights set forth in the Covenant, although some improvement was still needed. Non-governmental organizations (NGOs) had an important role to play in that regard, and, for that reason, in January and July 2001 the Government had consulted NGOs and sought their views. The contribution of members of the Committee was also of great importance, and his delegation hoped that the constructive dialogue which it trusted would ensue would help it to further implement the provisions of the Covenant.

4. Mr. IZUMI (Japan) added that on 11 May 2001 the so-called Hansen's disease affair had concluded with a court decision on compensation for those concerned. The Government, wishing to see a speedy resolution of the problem, had decided not to appeal, and an advisory committee comprising patients and Health Ministry representatives had met on three occasions since June 2001 to determine what steps to take to provide health care to sufferers from the disease and to promote their social reintegration as well as to assist members of their families.

5. Government figures indicated that in October 1999 there had been a total of 20,451 homeless people. A liaison group bringing together representatives of the Government and municipalities had been entrusted with taking measures for the protection of the homeless,

in particular in the fields of health, employment and housing. The measures differed from case to case, depending on whether, for example, the homeless were long-term unemployed or, perhaps, hostile to socialization. With respect to human rights violations, several steps had been taken within the framework of the competent State organs to make appropriate appeals mechanisms available to victims. Thus, the Council for Human Rights Promotion, established in 1997 within the Ministry of Justice, had conducted an investigation pursuant to which it had recommended the creation of a new appeals system under a human rights commission that was genuinely independent of the executive. The Government had noted the recommendation and decided to implement it.

6. The CHAIRPERSON invited the members of the Committee to put questions on the implementation of the Covenant in general.

7. Mr. PILLAY asked whether the provisions of the Covenant were taken into account by the State party when it adopted legislative or administrative measures. Were they directly applicable or was specific legislation necessary to prohibit, for example, the discrimination aimed at by article 2, paragraph 2, of the Covenant? Review of judicial precedent as it applied to certain rights gave the impression that judges were unaware that Japan, in ratifying the Covenant, had entered into obligations from which there was no derogation and which must be interpreted as having precedence over constitutional provisions. Given that, the delegation might wish to admit that there was a need for information campaigns to make judges and prosecutors more aware of the Covenant's provisions.

8. Mr. MALINVERNI, agreeing, said that the State party's judicial authorities seemed to place a very restrictive construction on the provisions of the Covenant from the standpoint of Japanese legislation and not the other way around. In so doing, they applied two concepts: allowing the legislator latitude to place restrictions on rights, and the concept of reasonable discrimination, which undermined the absolute character of the principle of non-discrimination. Further, according to three judgements by the Japanese Supreme Court in 2001, the provisions of the Covenant did not enjoy constitutional status. It also appeared that Japan had not accepted any of the systems of individual communications established by the Human Rights Committee, the Committee against Torture and the Committee on the Elimination of Racial Discrimination. The pretext given was that accepting the competence of those bodies to receive communications would contravene the principle of the independence of Japanese courts. In that connection he asked what the position of the Japanese Government was regarding accession to an optional protocol to the Covenant.

9. Mr. HUNT asked why the Japanese Government had no plans to formulate a national plan of action on human rights, as recommended in paragraph 71 of the 1993 Vienna Declaration and Programme of Action. He noted that Japan had no national agency for human rights in accordance with the 1991 Paris Principles, although a somewhat similar body seemed to be envisaged according to the May 2001 report of the Council for Human Rights Promotion. He asked for clarification. The mandate of any such body must encompass economic, social and cultural rights. He also asked how the Government ensured that the provisions of the Covenant were taken into account in domestic policy decisions.

10. Turning to international cooperation, he congratulated Japan on its position as primary donor among the members of the Development Aid Committee. He asked what percentage of gross national product (GNP) was devoted to official development assistance (ODA). United Nations Development Programme (UNDP) information indicated that the 1997 figure had been 0.22 per cent, and he asked what the current figure was. Lastly, he asked whether, in reviewing policy at the World Bank, the International Monetary Fund and the World Trade Organization, the representatives of the State party took account of the obligations arising under the Covenant for both the State party and recipients of Japanese aid.

11. Mr. CEAUSU noted that in the State party's written replies reference had been made to the case of a foreign national whose application for welfare had been turned down on the pretext that the Covenant allowed a degree of discrimination on the basis of reasonable cause. That interpretation was highly debatable, and it appeared clear that in fact a decision should be based solely on the financial situation of the applicant. Regarding implementation of the provisions of article 7 (d) of the Covenant, the delegation had explained that it reserved the right not to be bound by the provision on "remuneration for public holidays", citing the lack of a consensus thereon in Japanese society. Yet the exercise of social rights did not always require consensus within society, and it was for the Government to guide public opinion and require employers to observe the provisions of article 7 of the Covenant.

12. Mr. SADI said that the manner in which Japan, as an economic super-Power, interpreted and implemented the provisions of the Covenant would necessarily have an impact in neighbouring countries. The position of the Japanese Government that only national legislation and constitutional provisions, and not the Covenant, could be cited before the courts was thus to be deplored. He asked what follow-up had been given to the Committee's recommendations pursuant to its consideration of the State party's initial report.

13. Mr. GRISSA asked for clarification of paragraphs 69 and 70 of the core document. Paragraph 69 stated that human rights treaties ratified by Japan had legal effects as part of its internal law, whereas paragraph 70 stated that whether or not to apply directly provisions of treaties should be judged in each specific situation, which meant, in his view, on the basis of a necessarily arbitrary interpretation.

14. Mr. RATTRAY said that he trusted that the State party would review its position on the direct application of the Covenant under its internal law. With respect to maintenance of the reservation to article 13, paragraph 2, of the Covenant, which dealt with the provision of free secondary education, he asked the delegation if it could give an assurance that no pupil would be refused admission to a secondary school because his or her parents could not pay school fees. He requested information on the scholarship programme. Lastly he asked whether, before taking decisions on housing and health, the Government took into account the potential impact on human rights.

15. Mr. IZUMI (Japan) said that the Covenant was not merely a political programme, but had legal effects as an element of internal law. While the Government was not contemplating making it directly applicable, it ensured that decisions taken did not violate the commitments

entered into under the Covenant. He noted that article 2 of the Covenant provided for the progressive realization of all the rights enunciated, and that some of those rights were already guaranteed under national legislation.

16. On equality, he said that the Constitution did not guarantee absolute equality. Discrimination could be tolerated provided it had a logical basis. The optional protocol to the Covenant would provide an appropriate means of implementing its provisions. The Government must, nevertheless, consider what problems might arise, including the impact on its judicial system of potential appeals to international authorities.

17. Regarding remuneration for public holidays, he said that it was not for the Government to decide the issue, which was the subject of negotiation between workers and employers. The Government might, however, alter its position if a consensus to that effect emerged within society.

18. Mr. INOUE (Japan) said that lower secondary education was free. However, in the case of higher secondary education, as well as higher education, parents were expected to make a financial contribution. He did not think it necessary to make such education free, and thus to withdraw the reservation to article 13, paragraph 2, of the Covenant, as the current system worked satisfactorily. On the other hand the State party would continue to take measures to provide more help to pupils whose parents could not afford to pay for their studies, in particular through the development of the scholarship programme.

19. Mr. MORIMOTO (Japan) said that judges, prosecutors and lawyers all received the same training before they specialized. Courses on international human rights treaties in particular were given to them.

20. Mr. SAKAI (Japan) said that the provisions of the Covenant were taken into account in policy formulation. There was no need to promulgate new legislation to protect rights that were already fully guaranteed under the Constitution and national legislation.

21. Regarding official development assistance, the Government was endeavouring to attain the objective established by the United Nations, namely 0.7 per cent of gross national product. In 2000 Japanese official development assistance had represented 0.27 per cent of GNP. Much of that aid had been devoted to the realization of economic, social and cultural rights. The Government took the protection of human rights fully into account in ODA projects.

22. The Council for Human Rights Promotion, established in 1997, had recommended the establishment by the Government of an independent body within the executive to look into human rights violations, play a mediation role, counsel victims and take part in prosecutions. Nevertheless the State party did not exclude legislative action in that area.

23. Mr. KAWAI (Japan) said that it was not necessary to formulate a national plan of action on human rights as the authorities had already taken appropriate measures. The Government would, of course, continue to promote respect for all such rights. The provisions of the Covenant

were taken into account in housing policy. The Government provided generous subsidies for the construction of low-income housing and took steps to assist disadvantaged and vulnerable groups, in particular the elderly and the handicapped.

Articles 1-5 of the Covenant

24. Ms. BARAHONA-RIERA noted that Japan had a high level of human development, but that Japanese women were not full participants at the decision-making level in politics and business. She asked for information on the impact of the Plan for Gender Equality and whether sanctions were provided for in the event of discrimination in remuneration and promotion as well as harassment in the workplace. She asked whether the Government was taking measures to enable women to accede to elective political positions and whether there was a quota system. She also requested information on the patrimonial rights of women, in particular with regard to succession, whether of assets acquired during marriage or their division in the event of divorce. What responsibilities did men and women have for the maintenance of children in marriage and in the event of divorce? Lastly, she asked whether the Government intended to acknowledge its historical responsibility towards women exploited as sex slaves in the Second World War.

25. Mr. AHMED said that he shared the concern of members of the Committee at the discrimination suffered by certain vulnerable groups, namely the Buraku, Ainu and Kyukyu peoples - who had to tolerate the presence of foreign troops, and by Koreans and other foreign residents, as well as by Japanese repatriated from China. He called on the Government to put an end to all cases of discrimination by bringing about a genuine human rights revolution.

26. Mr. WIMER ZAMBRANO said that it was surprising that Japan, one of the most active States in terms of international cooperation to promote human rights, had not ratified 8 of the 16 ILO conventions on economic, social and cultural rights. He asked why that was so and why the Government had not succeeded in putting an end to the various kinds of discrimination of which certain population groups were victims.

27. Mr. THAPALIA, noting that women represented 32 per cent of the unskilled labour force but only 4 per cent of senior management, asked what steps had been taken by the Government to combat gender-based discrimination. He also asked for further details of discrimination against refugees, in particular the difficulties that refugees had in securing the right of asylum.

28. Mr. MALINVERNI asked for information on discrimination against the handicapped and on the steps taken by the Government to integrate them into the labour force, given that only 250,000 handicapped persons out of a total of 5.7 million had a job. He also asked for clarification of the status of Koreans in terms of education, as several sources indicated that certain Korean schools were not recognized by the Ministry of Education and the qualifications that they awarded did not allow university entry.

29. Mr. CEAUSU said that several NGOs had informed the Committee that the 639,000 Koreans resident in Japan were victims of discrimination as they did not have Japanese nationality, and that it was very difficult for them to acquire citizenship. Could the delegation

provide information on the status of the Korean community? He was of the view that it was time for Japan to reconcile itself with its history and treat the Koreans living in the country properly by granting them the same rights as those enjoyed by Japanese citizens.

30. Mr. SAID asked whether, regarding equality of the sexes, Japan drew any distinction between economic, social and cultural rights and civil and political rights. He asked whether programmes existed for minority groups. The concept of reasonable discrimination ran counter to human rights jurisprudence, in view of which he asked whether the Government intended to reconsider its position on the question.

31. Mr. GRISSA welcomed the inclusion by Japan in its second periodic report (E/1990/6/Add.21) of a comprehensive list of legislation prohibiting discrimination, but asked what the real situation was. It must be noted that several significant inequalities existed between men and women. For example, only 28 per cent of girls pursued university studies, a very low figure for a country as wealthy as Japan. He asked what the Government was doing to combat discrimination.

32. Mr. TEXIER asked why Japan had ratified the 1951 Convention and 1967 Protocol relating to the Status of Refugees, but neither the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. Regarding refugees, of whom there were few in Japan, a different status was accorded depending on whether refugees came from southern Asia or elsewhere. He asked what the reason was, and whether the Government contemplated according the same status to all refugees irrespective of country of origin.

33. Mr. IZUMI (Japan) said that Japan spared no effort to guarantee equality of rights between Japanese and foreigners. Nationality criteria embracing various spheres (housing, social security, employment) had been abolished, so that the same provisions applied across the board. The Government had also taken steps to investigate violations which Koreans were alleged to have suffered. As for minority groups such as the Aina and Buraku (Dowa), several programmes had been established to improve living conditions and to reduce inequality between those groups and the remainder of the Japanese population. Visible results had been obtained: improvement in housing conditions, creation of jobs and strengthening of social protection. He noted that the inhabitants of Okinawa enjoyed the same rights as other Japanese. The difficulties that they encountered, including freedom of movement, were related solely to the heavy concentration of United States military bases on the territory of Okinawa. The Government had adopted three reclamation and development plans which should help to lessen the problems faced by the inhabitants of the territory.

34. Mr. TSUNAKI (Japan), representing the Gender Equality Bureau, acknowledged that there was inadequate participation by women in all segments of society. The Government intended to collect and issue data twice yearly on the number of women in government and private enterprise, then draw a comparison and recruit more women if their numbers were too low. Each ministry was, moreover, required to establish specific targets in that regard. Increased participation by women in public life was also among the main objectives of the plan adopted by the Government in December 2000. A committee on gender equality had been

established to evaluate the results of the policies and measures adopted by the Government. With regard to violence against women, a national campaign had been launched in April 2001 to increase awareness of the problem and new legislation targeted conjugal violence.

35. Ms. ASADA (Japan) said that, among other relevant provisions, the Revised Equal Employment Opportunity Law prohibited all discrimination against women in recruitment, appointment, assignment and promotion; it established a system whereby the names of employers not observing the law were made public, and provided for mediation between employers and women who thought themselves victims of discrimination. A number of offices throughout the country ensured that personnel management respected the law. To date, female employees and employers had submitted more than 20,000 queries relating to problems in connection with implementation of the law, of which 8,600 related to allegations of sexual harassment. The Government offered advice to enterprises on all questions relating to sexual harassment.

36. The Government advised and supported employers seeking to take specific steps to eliminate unequal treatment of men and women. There was still a significant salary gap between men and women, but it was gradually being reduced. It was explained in part by the fact that men and women had traditionally not held the same jobs, that the classification of those jobs was different and that women worked for shorter periods. The implementation of the new Revised Equal Employment Opportunity Law should improve matters. Incentives had been put in place to encourage women to take jobs thus far restricted to men and to extend the length of their careers.

37. Mr. MORIMOTO (Japan) said that before 1990 the surviving spouse inherited one third of the couple's goods, compared with one half today, the other half going to the children. In the event of divorce, couples had an opportunity to reach an amicable settlement and to decide questions relating to custody and payment of alimony for themselves. They could also refer such questions to a judge for a ruling.

38. Mr. AOKI (Japan) said that 97.7 per cent of girls had attended school in 2000 compared with 96.3 per cent of boys. There was still a gap between girls and boys in higher education, but it was closing. In school textbooks education officials were endeavouring to portray working women exercising a profession together with men engaged in household and family work.

39. Mr. IZUMI (Japan) said that the presence in the delegation of women holding high-level positions bore witness to the professional development of women. Responding to a question on "comfort women", he stated that the Prime Minister of Japan had sent a letter to each of them in which he had expressed his regret and remorse at the grave affronts they had suffered to their dignity, honour and feelings. It was intended to establish a compensation fund for them.

40. Mr. SAITO (Japan) said, regarding orphans abandoned in China, that those who returned to Japan were given installation assistance as well as counselling and vocational training.

41. Mr. INOUE (Japan), speaking on Korean schools, said that all State schools providing compulsory education accepted foreigners as well as Japanese, including Korean children who wished to attend. Foreign pupils received, in common with Japanese pupils, free education and

textbooks. Those who did not wish to attend a Japanese school could attend other schools; there were Korean schools, and also American and German schools. In general, foreign community schools were not recognized by the State, not because the pupils were of foreign origin, but because those schools did not apply government educational standards. The situation was the same in many countries in the world. In Japan as elsewhere, pupils at private or foreign schools that did not follow the national education curriculum must pass an entrance examination if they wished to enrol in an institution of higher education. Pupils at Korean schools were not discriminated against on the basis of their nationality.

42. Mr. MORIMOTO (Japan) said that Koreans could be naturalized if they fulfilled the necessary conditions. Those who did not wish to be naturalized had enjoyed a special residence status since 1991.

43. Mr. SAITO (Japan) said that there were incentives to encourage employment of the handicapped. Employers were obliged to hire a percentage of handicapped persons, representing at least 1.8 per cent of their staff, or pay a tax used to fund measures for the handicapped. Handicapped children were catered to by special institutions. OECD statistics indicated that approximately 2.4 per cent of children attended such institutions, a relatively low figure in comparison with other countries. The authorities made every effort to promote the development of handicapped children, adapt the content of education to their specific needs and encourage contacts with other children.

44. Ms. AOKI (Japan) said that the principle of non-discrimination set forth in article 2 of the Covenant was provided for by article 14 (i) of the Japanese constitution.

45. Mr. MORIMOTO (Japan) said that all refugees were treated equally without any discrimination on the basis of nationality. Their situation and the granting of refugee status were consistent with the relevant international agreements. One reason why Japan had not yet acceded to certain ILO conventions was incompatibility between the content of the conventions and national legislation. His delegation would provide more specific responses in due course.

46. Mr. SADI asked whether the letter of apology sent by the Japanese Prime Minister to the "comfort women" marked an end to the question, or whether other steps were contemplated. He noted that the legislation providing for special treatment for the Buraku was due to lapse in 2002, and asked whether the Government intended to extend it.

47. Mr. WIMER ZAMBRANO said that the Japanese authorities had estimated the Korean population at some 50,000 individuals, whereas other sources gave a figure of 690,000. He requested clarification.

48. Mr. GRISSA asked whether the Japanese Government intended to pay compensation to the "comfort women".

49. The CHAIRPERSON, speaking as a member of the Committee, asked whether the Asian Women's Fund would be funded by the State or privately. She noted that the Japanese authorities had been requested to open the national archives to reveal the full truth about how the

system of "comfort women" had operated, and also to make reference to that form of sexual slavery in school textbooks so that it should not be forgotten and would never recur; she asked whether the Government intended to respond to those demands.

50. Speaking as Chairperson, she invited the members of the Committee to put questions on the implementation of articles 6 to 9 of the Covenant.

Articles 6-9 of the Covenant

51. Mr. KOUZNETSOV asked for clarification of the words "public employees" and their number. He was surprised to read in paragraph 48 of the report that such employees, except for those working in government enterprises, could not conclude labour agreements on conditions of employment, including salaries. Further, table 6 (E/1990/6/Add.21, para. 50) indicated that there were several ways to establish a minimum wage: the Ministry of Labour or the Director of the Prefectural Labour Standards Office could establish a minimum regional wage or a minimum wage by industry; equally, a regional minimum wage could be set on the basis of collective agreements. He wondered whether those different methods of determining wages conflicted. Table 6 also indicated that the Director of the Prefectural Labour Standards Office had established a minimum wage for 251 types of employment, which seemed excessive.

52. Further, paragraph 51 of the report indicated that unskilled workers could be excluded from the minimum wage regime on the authority of the Director of the Prefectural Labour Standards Office. Did that mean that those exercising unskilled jobs did not necessarily receive the minimum wage? He was also concerned about paragraph 77 of the report, which stated that annual paid holidays were not likely to be taken fully since workers tended to save their holidays in case of emergencies such as sickness. Was it to be understood that sickness was considered an emergency and that sick days were not paid?

53. Mr. MARTYNOV said that he shared the concern expressed by Mr. Malinverni at the situation of the handicapped. It seemed that their rights, in particular the right to employment, were not properly protected and that employers hired fewer handicapped persons than recommended by law. It also seemed that there was no legislation on discrimination against the handicapped.

54. Regarding implementation of article 9 of the Covenant, certain sources indicated that around half of all handicapped persons received no allowance, and he asked whether that was so. Further, there seemed to be no minimum old-age pension. If that was so, did the Government intend to establish such an allowance? Was the level of retirement pensions adequate to ensure a decent standard of living? The retirement system was rather complex. The step taken in 1996 to reduce the fixed element of the pension seemed to introduce inequality between men and women. It also seemed that the percentage of national income that Japan spent on social security allowances was half of the equivalent percentage in France and Germany. He asked whether it was the intention of the Government to maintain expenditure on social insurance at that level.

The meeting rose at 1 p.m.